

### **REMARKS**

This paper responds to the Office Action dated June 10, 2009. Claims 95, 102, and 108 are amended herein. Claims 1-94 remain canceled, and no claims are added. As a result, claims 95-119 remain pending in this application.

#### **§ 112 Rejections of the Claims**

Claims 95-113 were rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Office Action stated that, in independent claims 95, 102, and 108, “there is insufficient antecedent basis for [the limitation of “displaying the name”].”<sup>1</sup> Claims 95, 102, and 108 are amended herein for clarity. Applicant respectfully submits that independent claims 95, 102, and 108, and their respective dependent claims satisfy 35 U.S.C. § 112, second paragraph. Thus, Applicant respectfully requests that these rejections be removed and the claims be allowed.

#### **§ 103 Rejections of the Claims**

Claims 95-105 and 107-118 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the Feedback Forum (eBay.com, November 10, 1999, via web.archive.org; hereinafter “Feedback Forum”), in view of Falk et al (U.S. Publication No. 2001/0037206; and hereinafter “Falk”), in further view of Fuerst (U.S. Patent No. 6,189,029). A determination of obviousness requires a factual showing that “the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.”<sup>2</sup>

Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined.<sup>3</sup>

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<sup>1</sup> Office Action, page 2.

<sup>2</sup> *Graham v. John Deere*, 383 U.S. 1, 17, 148 U.S.P.Q. 459, 467 (1966).

<sup>3</sup> *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 U.S.P.Q.2d 1385 (2007).

“The test for obviousness is **not whether the features** of a secondary reference **may be bodily incorporated** into the structure of the primary reference . . . . Rather, the test is what the **combined teachings** of those references would have suggested to those of ordinary skill in the art.”<sup>4</sup> Applicant respectfully submits that a determination of obviousness is not established for the reason that the scope and content of the cited references, even if combined, do not teach or suggest Applicant’s claimed subject matter or support rational inferences that one skilled in the art reasonably would be expected to draw to reach Applicant’s claimed subject matter.

Each of independent claims 95, 102, and 108 recites, in part, “the **predefined feedback comment including a field substitutable with a name.**”<sup>5</sup> Independent claim 114 recites, in part, “a **predefined and selected feedback comment including a field substitutable with the seller identifier, the buyer identifier, or an item identifier.**”<sup>6</sup> These limitations are missing from the combined scope and content of the cited references.

The Office Action states, “The Feedback Forum **does not** explicitly disclose the predefined **feedback comment including a field substitutable with a name.**”<sup>7</sup> Applicant agrees. The Office Action, however, points to columns 5-7 of Fuerst as allegedly disclosing this limitation. The cited passages of Fuerst discuss a “**table 600** where fields define the survey name, [question identification number] and the group authorized to view the results,”<sup>8</sup> and where “results of each question in the survey is stored in table 600 . . . together with the survey group identification, the survey name and the [question identification number].”<sup>9</sup> A table that stores results of each question in a survey is not a **predefined** feedback comment or any functional equivalent thereof. As a result, “table 600” of Fuerst is not functionally equivalent to a predefined feedback comment including a field substitutable with a name of a user or an item, as recited in claims 95, 102, 108, and 114. Thus, Fuerst fails to disclose this limitation.

<sup>4</sup> *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981), *see* MPEP 2145(III), *emphasis added*.

<sup>5</sup> Claims 95, 102, and 108, *emphasis added*.

<sup>6</sup> Claim 114, *emphasis added*.

<sup>7</sup> Office Action, page 4, *emphasis added*.

<sup>8</sup> Fuerst, col. 5, line 66 – col. 6, line 4, selected internal references omitted.

<sup>9</sup> *Id.* at col. 7, lines 46-48, selected internal references omitted.

Contradicting itself, however, the Office Action cites page 1 of Feedback Forum as disclosing a **feedback comment including a field substitutable with a name**.<sup>10</sup> Page 1 of Feedback Forum, however, merely discusses “Feedback about an eBay User” shown as “a member’s User ID and a **number in parentheses**,” where “[t]his **number is the Feedback Rating**.”<sup>11</sup> As defined in Feedback Forum, this “feedback about an eBay user” is the numerical “Feedback Rating” shown inside the parentheses. Logically, this feedback, being “in” the parentheses, does not include the User ID shown outside the parentheses. Discussion of a numerical rating fails to disclose a comment including a field substitutable with a name. As a result, the numerical feedback rating of Feedback Forum is not functionally equivalent to a feedback comment including a field substitutable with a name, as recited in claims 95, 102, 108, and 114. Therefore, Feedback Forum fails to disclose this limitation.

Moreover, prior art must be considered in its entirety,<sup>12</sup> and Feedback Forum explicitly describes this numerical feedback rating as “a **total . . . of positive comments**”<sup>13</sup> A total is a number and is consistent with a numerical feedback rating. A total, however, is not functionally equivalent to a predefined feedback comment including a field substitutable with a name, as recited in claims 95, 102, 108, and 114. Thus, Feedback Form does not disclose this limitation.

Additionally, the Office Action points to FIG. 8 and paragraphs 0079-0080 of Falk as allegedly disclosing a **predefined feedback comment**.<sup>14</sup> While the cited portions of Falk discuss “multiple choice responses”<sup>15</sup> which may be “**free form** text responses,”<sup>16</sup> nothing in Falk suggests a **predefined** feedback comment **including a field substitutable with a name**. None of the responses shown in FIG. 8 of Falk<sup>17</sup> include a field substitutable with a name. To a

<sup>10</sup> Office Action, page 12, Response to Arguments, emphasis added.

<sup>11</sup> Feedback Forum, page 1, “I. See Feedback about an eBay User,” emphasis added.

<sup>12</sup> *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984), *see* MPEP 2141.02(VI), (“**A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.**” emphasis added).

<sup>13</sup> Feedback Forum, page 1, emphasis added; *see also*, “You receive +1 point for each positive comment . . . ,” emphasis added.

<sup>14</sup> Office Action, page 12.

<sup>15</sup> Falk, FIG. 8 and paragraph 0079.

<sup>16</sup> *Id.* at paragraph 0080, emphasis added.

<sup>17</sup> *Id.* at FIG. 8, “No,” “Not Really,” “Ya,” “Tasty,” “Great,” “Very Bad,” “Not Good,” “So So,” “Good,” “Awesome,” and “Yes.”

person skilled in the art, a free-form text response is not, and cannot be, **predefined**. As a result, Falk is silent with respect to a predefined feedback comment including a field substitutable with a name, as recited in claims 95, 102, 108, and 114. Thus, Falk fails to disclose this limitation.

Furthermore, “[i]f the proposed modification or combination of the prior art would **change the principle of operation** of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.”<sup>18</sup> Since Feedback Forum discusses a numerical feedback rating,<sup>19</sup> any modification of this numerical feedback rating to include a field substitutable with a name would change the principle of operation of Feedback Forum, namely, the principle of providing the **numerical** rating discussed throughout Feedback Forum. The “feedback about an eBay user” would no longer be a “**total** of . . . positive comments,”<sup>20</sup> as explicitly taught in Feedback Forum. Thus, the teachings of Feedback Forum, even if combined with a hypothetical disclosure of a field substitutable with a name, are not sufficient to render the claims *prima facie* obvious.

For at least these reasons, the scope and content of Feedback Forum, Falk, and Fuerst, even if combined, do not teach or suggest Applicant’s claimed subject matter or support rational inferences that one skilled in the art reasonably would be expected to draw to reach Applicant’s claimed subject matter. As a result, a determination of obviousness is not established with respect to any of independent claims 95, 102, 108, and 114, and their respective dependent claims. Thus, Applicant respectfully requests that these rejections be withdrawn and the claims be allowed.

Claims 106 and 119 were rejected under 35 U.S.C. 103(a) as being unpatentable over Feedback Forum, in view of Falk, in further view of Fuerst, in further view of Bayer et al. (U.S. Patent No. 6,311,190, hereinafter “Bayer”). Applicant cannot find within Bayer the limitations shown above to be absent from Feedback Forum, Falk, and Fuerst. Applicant respectfully submits that dependent claims 106 and 119, which respectively depend from independent claims

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<sup>18</sup> *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959), *see* MPEP 2143.01(VI), *italics and emphasis added*.

<sup>19</sup> Feedback Forum, page 1, “This number is the Feedback Rating.”

<sup>20</sup> *Id.* at page 1, *emphasis added*.

102 and 114, are not obvious over the combination of Feedback Forum, Falk, Fuerst, and Bayer. Thus, Applicant respectfully requests that these rejections be withdrawn and the claims be allowed.

**CONCLUSION**

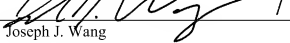
Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (408) 278-4048 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 10th day of September, 2009.

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